IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 22ND NOVEMBER 2006 / 1ST AGRAHAYANA 1928

Crl.Rev.Pet.No. 4063 of 2006()

CRA.242/2005 of SESSIONS COURT, KALPETTA
ST.4661/2004 of JUDL.MAGISTRATE OF FIRST CLASS- I, SULTHANBATHERY

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REVN. PETITIONER: APPELLANT/ACCUSED

K.A.KABEER, S/O. ABDUL RAHIMAN,
AGED 39 YEARS, KARUMATTUKKUDI HOUSE,
NANGELIPADI, NELLIKUZHI,
KOTHAMANGALAM.

BY ADV. SRI.M.P. ASHOK KUMAR

RESPONDENTS/RESPONDENTS/COMPLAINANT& STATE:

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1. K.M.SHAJI, S/O.MOOSSES,
KALLINGAL HOUSE, KOTTAKKUNNU,
SULTHAN BATHERY.

2. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR ADV. SHRI C.K. SURESH.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 22/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T. SANKARAN, J.

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CRL.R.P. 4063 OF 2006

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Dated this the 22nd November , 2006

O R D E R

The petitioner was found guilty of the offence under section 138 of the Negotiable Instruments Act and he was sentenced by the trial court to undergo simple imprisonment for three months. There was also a direction to pay a sum of Rs. 2,60,000/- to the complainant as compensation under section 357(3) of the Code of Criminal Procedure and in default to undergo simple imprisonment for two months. The petitioner challenged the conviction and sentence in appeal. The appellate court confirmed the conviction. But the sentence was modified and reduced to imprisonment for one day. Instead of Rs.2,60,000/- ordered to be paid as compensation by the trial court , the appellate court held that the petitioner shall pay a sum of Rs. 2,70,000/- and in default of payment of compensation, the petitioner was directed to undergo simple imprisonment for three months.

2. The case of the complainant is that the accused borrowed a sum

of Rs.2,60,000/- agreeing to re-pay the same within two weeks and issued Ext.P1 cheque dated 31.03.2004 for the said amount. The cheque was presented within time, but it was dishonoured on the ground that “account closed on advice”. The complainant issued Ext.P4 notice calling upon the accused to pay the amount covered by the cheque. Ext.P6 reply notice was issued by the accused. The contention raised by the accused in Ext.P6 is that there was business transaction in respect of ginger between the complainant and the accused and that the cheque was given as security. It is also contended that the entire amount due to the complainant was paid by the accused. It is not stated what was the amount due to the complainant and on what date the amount was re-paid. Before the trial court, the complainant was examined as P.W.1. He was not cross examined on behalf of the accused. It was represented before the court that the accused did not want to cross examine P.W.1. When the accused was questioned under section 313 Cr .P.C., he only stated that the evidence given by P.W.1 is not correct. When the accused was asked as to whether he has anything more to say in respect of the evidence already on record, he answered in the negative.

3. The trial court as well as the appellate court held that the

presumption under section 139 of the Negotiable Instruments Act is available in favour of the complainant and that the accused has not rebutted the presumption. No defence evidence was adduced by the accused. No circumstances are made out in the evidence of P.W.1 to doubt the correctness of the case put forward by the complainant as there was no cross examination of P.W.1 at all . Though sufficient opportunity was given to the accused to cross examine P.W.1 and to adduce defence evidence, he did not avail that opportunity. The contention put forward by the accused was not accepted, to my mind, correctly, by the courts below as the accused failed to adduce any evidence to rebut the presumption under section 139 of the Act . The conviction of the accused was therefore justified and no interference is called for in the conviction.

4. As regards the sentence, the appellate court has modified the sentence to simple imprisonment for one day and directed the accused to pay compensation of Rs. 2,70,000/-. Since no interference is being made in the conviction, I do not think it is necessary to issue notice to the first respondent/complainant. I am of the view that in the place of imprisonment for one day, imprisonment till the rising of the court can be awarded. In the facts and circumstances of the case, it would also be just and proper

to grant three months' time to the petitioner to pay compensation.

5. In the result, Crl. Revision Petition is allowed in part. The conviction is confirmed and the sentence is modified as follows:

Instead of sentence of imprisonment for one day, the petitioner shall undergo imprisonment till the rising of the court. The direction to pay Rs.2,70,000/- as compensation and in default of payment of compensation to undergo simple imprisonment for three months, shall stand confirmed. However, the petitioner is granted three months' time to pay the amount of compensation. The petitioner shall appear before the trial court on 18.12.2006 to suffer imprisonment till the rising of the court and shall continue to appear as may be directed by the trial court till the amount of compensation is paid.

K.T. SANKARAN,
JUDGE.

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